
COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

SUFFOLK, SS.

No. SJC-12914

MASSACHUSETTS COALITION FOR THE HOMELESS;
JOHN CORREIA; AND JOSEPH TREEFUL,
Appellants,

v.

CITY OF FALL RIVER; DISTRICT ATTORNEY OF BRISTOL COUNTY;
AND THE CHIEF OF POLICE OF FALL RIVER,
Appellees.

ON RESERVATION AND REPORT FROM THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

**BRIEF OF APPELLEE
DISTRICT ATTORNEY OF BRISTOL COUNTY**

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June 8, 2020

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QUESTIONS PRESENTED

Whether a Massachusetts statute, G.L. c. 85, § 17A, violates the free speech clauses of the federal and state constitutions insofar as it imposes a fine upon a person who “signals” or “causes the stopping of” a moving vehicle, or “accosts any occupant of a vehicle stopped” on any public way, if such conduct is undertaken “for the purpose of soliciting any alms,” but exempts the same conduct from a fine if undertaken for the purpose of “selling ... newspapers” or for “nonprofit organizations” to solicit funds after obtaining a permit from the city or town?

STATEMENT OF THE CASE

Nature of the Appeal

This matter is before the full Court on a reservation and report from the Single Justice (Cypher, J.), who granted plaintiffs’ motion to transfer the case from Bristol County Superior Court in accordance with G.L. c. 211, § 4A, reserved decision on the matter, and reported the case to the full Court. Record Appendix (“R.A.”) 145-46.

Legal Framework

The statute at issue is G.L. c. 85, § 17A. In full, the statute reads as follows:

Whoever, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise, except newspapers, or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic, shall be punished by a fine of not more than fifty dollars. Whoever sells or offers for sale any item except newspapers within the limits of a state highway boundary without a permit issued by the department shall for the first offense be punished by a fine of fifty dollars and for each subsequent offense shall be punished by a fine of one hundred dollars. Notwithstanding the provisions of the first sentence of this section, on any city or town way which is not under jurisdiction of the department, the chief of police of a city or town may issue a permit to nonprofit organizations to solicit on said ways in conformity with the rules and regulations established by the police department of said city or town.

Id. The statute thus imposes a fine upon a person who “signals” or “causes the stopping” of a moving vehicle on a public way, or “accosts any occupant of a vehicle stopped” on a public way, if such conduct is “for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise”. *Id.* But the statute exempts the same conduct from a fine if undertaken for the purpose of selling newspapers. *Id.* The statute also allows cities and towns to exempt such

conduct from a fine if undertaken by a “nonprofit organization” to solicit funds pursuant to a permit issued by the local police chief. *Id.*¹

Statement of Facts

Plaintiffs John Correia and Joseph Treeful are low-income residents of Fall River who are experiencing homelessness; they are both members of the plaintiff Massachusetts Coalition for the Homeless. R.A.59. Correia and Treeful solicit funds for their own behalf from members of the public, activity that is sometimes referred to as “panhandling.” *Id.* To do so, they occasionally stand by the side of a public street in Fall River, with signs indicating that they are homeless, and accept donations from passing motorists. R.A.59-60. They have engaged in this conduct in the past, and intend to do so in the future. *Id.*

¹ The statute is arguably ambiguous as to whether it proscribes or exempts the identified conduct if undertaken for the purpose of selling “ticket[s] of admission to any game, show, exhibition, fair, ball, entertainment or public gathering.” G.L. c. 85, § 17A. Plaintiffs suggest that these activities are exempt from a fine, constituting a list of exempted “merchandise” along with newspapers. *See* Brief of Plaintiffs/Appellants 6-8, 22-24. These activities could also be read, however, as separately proscribed “selling” activities, distinct from the selling of “merchandise.” G.L. c. 85, § 17A. But because plaintiffs do not assert that they are engaged in the selling of “ticket[s] of admission to any game, show, exhibition, fair, ball, entertainment or public gathering,” this aspect of the statute is not before the Court and any ambiguity as to its meaning is immaterial to this case’s resolution.

Correia and Treeful allege that they have been subject to multiple criminal complaints filed by members of the Fall River Police Department for panhandling along public ways in violation of G.L. c. 85, § 17A. R.A.26, 60. They also allege that they have each been incarcerated based in part on violations of this statute—Correia for failing to respond to a summons to appear and respond to a criminal complaint, Treeful for a violation of probation that included a complaint for violating this statute. R.A.27, 60.

Procedural History and Disposition Below

Plaintiffs initially brought this case in Bristol County Superior Court against the City of Fall River (“Fall River”), the Chief of Police of Fall River, and several Fall River police officers (collectively, the “Fall River defendants”), as well as the Bristol County District Attorney (“District Attorney”). The complaint originally contained two counts—the first seeking declaratory judgment that the statute’s prohibition on panhandling violates the free speech clauses of the federal and state constitutions (and an injunction against its enforcement); and the second seeking damages and injunctive relief against the Fall River defendants based on alleged violations of the Massachusetts Civil Rights Act. Record Appendix (“R.A.”) 20-37; *see also* Addendum to this Brief (“Add.”) 21-26 (Docket of Superior Court

proceedings).² Several days later, the plaintiffs filed a motion for preliminary injunction, seeking to enjoin future arrests, criminal complaints, and prosecutions under the statute. Add.24.

Prior to the hearing on plaintiffs’ motion for preliminary injunction, plaintiffs and the District Attorney reached an agreement that the plaintiffs would not seek an injunction against the District Attorney. Add.28-29 (agreement); *see also* R.A.39 n.3 (Superior Court decision granting preliminary injunction, noting that, based on parties’ agreement, “[n]o preliminary injunction is being sought against the defendant Thomas Quinn”). The parties’ agreement was based on the District Attorney’s representation that, as far as he was aware, his office had never obtained or even sought a criminal conviction under this statute; the agreement also reflected the District Attorney’s commitment to dismiss any cases in which a criminal complaint based on violation of this statute issued during the pendency of the litigation (since the issuance of such complaints is not controlled by District Attorney’s Office). Add.28. The Fall River defendants, however, opposed the

² Because plaintiffs did not include all of the filings from the Superior Court in the Record Appendix they filed with their brief, the District Attorney is including some of those filings in the Addendum to this Brief, to provide additional context for the Court regarding the procedural history of the case.

preliminary injunction request, and after a hearing, the Superior Court (Yessayan, J.) issued a preliminary injunction as to those defendants. R.A.39-47.

Subsequently, the District Attorney filed a Notice of Consent to Entry of Judgment on Count I of the Complaint (“Notice of Consent”), by which the District Attorney requested that the Superior Court enter a final declaratory judgment in favor of plaintiffs in accordance with Mass. R. Civ. P. 65(b)(2).

R.A.50-53. The basis for the proposal was the District Attorney’s position that the statute is unconstitutional insofar as it authorizes imposition of a fine for signaling, stopping, or accosting a motor vehicle or its occupants on a public way if undertaken for the purpose of panhandling, while exempting the same conduct from sanction if it is undertaken for the purpose of selling newspapers or raising money for a nonprofit. *Id.*

In response to the District Attorney’s Notice of Consent, the plaintiffs voluntarily dismissed the damages claim under the Massachusetts Civil Rights Act against the Fall River defendants. Add.35-37. The Fall River defendants then joined with plaintiffs in requesting that the Superior Court take no action on the District Attorney’s Notice of Consent. Add.38-42. Plaintiffs and the Fall River defendants also jointly requested that the Superior Court stay the action, so that those parties could seek to have the matter transferred to Supreme Judicial Court

for Suffolk County and then reserved and reported to the full Court. Add.30-34.

The Superior Court obliged, taking no action on the Notice of Consent, and staying the case. *See* Add.26.

Plaintiffs and the Fall River defendants then jointly filed a motion in the Supreme Judicial Court for Suffolk County, requesting that the Single Justice transfer the case to that Court pursuant to G.L. c. 211, § 4A, and then reserve and report it to this Court. R.A.10-18. The District Attorney opposed the motion on the grounds that the matter could be resolved conclusively and expeditiously in the Superior Court based on the Notice of Consent, and because there were serious questions about whether the case presented the requisite adversity for adjudication of a constitutional question in light of the Notice of Consent and the Fall River defendants' silence regarding whether they would defend the constitutionality of the statute in this Court. R.A.69-75. The Fall River defendants subsequently clarified that they intended to defend the statute's constitutionality in this Court, *see* R.A.78, and after a hearing, the Single Justice (Cypher, J.) granted the motion to transfer the case and reserved and reported the case without decision to the full Court. R.A.145-46.

ARGUMENT

I. The Portion of G.L. c. 85, § 17A Challenged Here Is a Content-Based Restriction of Speech That is Subject to Strict Scrutiny and Fails the Narrow Tailoring Requirement of That Standard.

The District Attorney acknowledges here, as he has throughout this litigation, that the statute at issue in this case, G.L. c. 85, § 17A, is unconstitutional as a content-based regulation in prohibiting the “soliciting [of] any alms” from occupants of vehicles on public ways, while permitting the same form of expression in the same setting for different purposes. The statute imposes a fine on individuals who signal, stop, or accost a motor vehicle or its occupants on a public street for the purpose of panhandling, but exempts those who engage in the same conduct for the purpose of selling newspapers or soliciting funds for a nonprofit organization (provided those raising funds for a nonprofit first obtain a permit).

“It is beyond question that soliciting contributions is expressive activity that is protected by the First Amendment.” *Benefit v. City of Cambridge*, 424 Mass. 918, 922 (1997) (striking down state law requiring license to go door-to-door or in public places “for the purpose of begging or to receive alms” as a violation of the First Amendment) (citing *Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980)). In particular, this Court has held that “peaceful begging” constitutes protected “communicative activity.” *Id.* at 923. While such protected speech may

be subject to reasonable content-neutral time, place, and manner regulations—a question that is not presented by this case—here, section 17A regulates communicative activity based on its content; it prohibits individual requests for personal financial aid (*i.e.*, the “soliciting [of] any alms [or] contribution”) but allows “nonprofit organizations” that obtain a local permit “to solicit on [public] ways,” and further allows speech promoting the sale of newspapers. The statute therefore discriminates, on its face, against those who convey certain messages or speak on certain subjects.

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015) (striking down ordinance that imposed different restrictions on “ideological signs,” “political signs,” and “temporary directional signs” for particular events as impermissibly content based). Government regulation of speech is “content based” if a law “applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 2227. To determine whether a regulation is content based, a court must consider whether a law draws distinctions “on its face” based on the message a speaker conveys. *Id.* “Some facial distinctions based on a

message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.” *Id.* at 2227 (citations omitted). Here, the statute, by its terms, forbids panhandling on public streets while permitting the sale of newspapers and fundraising for nonprofits with a permit. Whether the distinction in the statute is defined by reference to the subject matter or the purpose of the speech in question, the result is the same: the statute is a content-based restriction of speech.

Under the controlling decisions from the Supreme Court in *Reed* and this Court in *Benefit*, therefore, section 17A is a content-based restriction on plaintiffs’ free-speech rights and, for that reason, is subject to strict judicial scrutiny. Under that demanding test, the Commonwealth would have to prove that the statute’s distinction between permissible and impermissible solicitation “furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed*, 135 S. Ct. at 2231 (citations and internal quotations omitted); *accord Benefit*, 424 Mass. at 925 (subjecting panhandling ban to strict scrutiny as a content-based restriction of speech in areas such as public parks and sidewalks that have historically been considered public forums).

To be sure, the statute is intended to further compelling governmental interests in public safety. *E.g.*, *Reed*, 135 S. Ct. at 2231 (assuming that “traffic safety” is a compelling government interest); *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (“ensuring public safety and order” and “promoting the free flow of traffic on streets and sidewalks” are “significan[t]” government interests). But the statute is not narrowly tailored to serve those interests, since it both forbids and permits the same public-safety-threatening conduct—*i.e.*, signaling or stopping a moving automobile or accosting the occupants of a stopped car on a public street—depending on the content of the message conveyed by the individual engaging in the conduct (*e.g.*, panhandling vs. selling newspapers). *See Reed*, 135 S. Ct. at 2231-32 (holding that city ordinance failed narrow-tailoring requirement of strict scrutiny based on its “underinclusiveness,” since it closely regulated signs with certain messages in the interest of traffic safety, while imposing lesser restrictions on signs with other messages even though such signs posed the same threat to traffic safety); *see also, e.g., Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 234-37 (D. Mass. 2015) (striking down Worcester ordinance banning aggressive panhandling as insufficient narrowly tailored);³ *McLaughlin v. City of Lowell*, 140

³ In the *Thayer* case involving Worcester’s panhandling ordinances, the district court had initially upheld most of the restrictions, and the First Circuit affirmed, but the Supreme Court granted certiorari, vacated the First Circuit’s decision, and

F. Supp. 3d 177, 183-84 (D. Mass. 2015) (striking down Lowell ordinances barring vocal panhandling in city's downtown area and aggressive panhandling citywide).

Accordingly, judgment should enter in this case declaring that G.L. c. 85, § 17A, is unconstitutional as contrary to the free speech clauses of the federal and state constitutions insofar as the statute prohibits the “soliciting [of] any alms” from occupants of vehicles on public ways, while simultaneously permitting such conduct if undertaken for the purpose of selling newspapers or soliciting funds for nonprofit organizations with a permit.⁴

remanded for further consideration in light of its decision in *Reed*. 135 S. Ct. 2887 (2015). On remand in 2015, the district court struck down Worcester's panhandling restrictions as impermissibly content-based. 144 F. Supp. 3d at 234-37.

⁴ In the Superior Court, the plaintiffs also sought a permanent injunction, R.A.32, but no such injunction is warranted. Courts “assume that public officials will comply with the law once a court has defined it, and injunctions usually are not needed in the absence of intransigence on the part of such public officials.” *Benefit*, 424 Mass. at 927 (stating that, on remand, the trial court may decline to enter a permanent injunction on this basis). Here, far from showing “intransigence,” the District Attorney has stated throughout this litigation that he has not prosecuted and will not prosecute anyone for the portion of section 17A challenged by the plaintiffs, because it is unconstitutional. R.A.50-53.

CONCLUSION

For the reasons set forth above, the Court should declare that G.L. c. 85, § 17A, is unconstitutional insofar as it prohibits the “soliciting [of] any alms” from occupants of motor vehicles on public ways.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Timothy J. Casey, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 2,781 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (version: Word 2016).

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I filed the attached document through the Electronic Filing Service Provider (Provider) for electronic service to the following registered Users:

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ADDENDUM

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Agreement Regarding Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction, filed April 9, 2019	Add. 28
Joint Motion of Plaintiffs and Fall River Defendants to Stay Proceedings in the Superior Court Pending Rulings by the Supreme Judicial Court on the Parties' Joint Motion to Transfer Count 1 and on the Constitutionality of G.L. c. 85, § 17A, filed June 3, 2019	Add. 30
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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XIV. Public Ways and Works (Ch. 81-92b)
Chapter 85. Regulations and By-Laws Relative to Ways and Bridges (Refs & Annos)

M.G.L.A. 85 § 17A

§ 17A. Soliciting from vehicles on public ways

[Currentness](#)

Whoever, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise, except newspapers, or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic, shall be punished by a fine of not more than fifty dollars. Whoever sells or offers for sale any item except newspapers within the limits of a state highway boundary without a permit issued by the department shall for the first offense be punished by a fine of fifty dollars and for each subsequent offense shall be punished by a fine of one hundred dollars. Notwithstanding the provisions of the first sentence of this section, on any city or town way which is not under jurisdiction of the department, the chief of police of a city or town may issue a permit to nonprofit organizations to solicit on said ways in conformity with the rules and regulations established by the police department of said city or town.

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1973CV00299 Massachusetts Coalition for the Homeless et al vs. City of Fall River et al

- Case Type
- Equitable Remedies
- Case Status
- Open
- File Date
- 03/29/2019
- DCM Track:
- A - Average
- Initiating Action:
- Declaratory Judgment G.L. c. 231A
- Status Date:
- 03/29/2019
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

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Date	Session	Location	Type	Event Judge	Result
04/09/2019 10:00 AM	Civil A (New Bedford)	Lower Courtroom	Hearing on Preliminary Injunction	Yessayan, Hon. Raffi N	Held - Under advisement

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Ticklers












<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	03/29/2019	06/27/2019	90	10/23/2019
Answer	03/29/2019	07/29/2019	122	
Rule 12/19/20 Served By	03/29/2019	07/27/2019	120	
Rule 12/19/20 Filed By	03/29/2019	08/26/2019	150	
Rule 12/19/20 Heard By	03/29/2019	09/25/2019	180	
Rule 15 Served By	03/29/2019	05/22/2020	420	
Rule 15 Filed By	03/29/2019	06/22/2020	451	
Rule 15 Heard By	03/29/2019	06/22/2020	451	
Discovery	03/29/2019	03/18/2021	720	
Rule 56 Served By	03/29/2019	04/19/2021	752	
Rule 56 Filed By	03/29/2019	05/17/2021	780	
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Under Advisement	04/09/2019	05/09/2019	30	04/17/2019
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Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/29/2019	Attorney appearance On this date Ruth A Bourquin, Esq. added as Private Counsel for Plaintiff Massachusetts Coalition for the Homeless		
03/29/2019	Case assigned to: DCM Track A - Average was added on 03/29/2019		 Image
03/29/2019	Original civil complaint filed.	1	 Image
03/29/2019	Civil action cover sheet filed.	2	 Image
03/29/2019	Summons and order of notice issued on a Complaint for a Preliminary Injunction , returnable on 04/09/2019 10:00 AM Hearing on Preliminary Injunction. Judge: Yessayan, Hon. Raffi N Applies To: City of Fall River (Defendant); Dupere, Albert F. (Defendant); Bernier, Paul (Defendant); Gouveia, David (Defendant); Smith, James (Defendant); Pavao, Michael (Defendant); Amaral, Derek (Defendant); Quinn, Thomas (Defendant)	3	
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03/29/2019	Attorney appearance On this date Ruth A Bourquin, Esq. added for Plaintiff Joseph Treeful		
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04/05/2019	Affidavit of Jessica Lewis	5	 Image
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant City of Fall River		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/09/2019	Matter taken under advisement: Hearing on Preliminary Injunction scheduled on: 04/09/2019 10:00 AM Has been: Held - Under advisement Hon. Raffi N Yessayan, Presiding Staff: Jennifer A Sullivan, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant Albert Dupere Individually and in his/her capacity As Chief of the Fall River Police Department		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant Paul Bernier Individually and in his/her capacity As Lieutenant in the Fall River Police Department		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant David Gouveia Individually and in his/her capacity As Lieutenant in the Fall River Police Department		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant James Smith Individually and in his/her capacity As Police Sergeant in the Fall River Police Department		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant Michael Pavao Individually and in his/her capacity As an Officer within the Fall River Police Department		
04/09/2019	Attorney appearance On this date Gary P Howayeck added as City / Town Counsel for Defendant Derek Amaral Individually and in his/her capacity As an Officer within the Fall River Police Department		
04/09/2019	Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction filed by City of Fall River	6	 Image
04/09/2019	City of Fall River's Memorandum in support of Opposition (P#6)	6.1	 Image
04/09/2019	Affidavit of Albert Dupere	6.2	 Image
04/09/2019	Attorney appearance On this date Patrick Otto Bomberg, Esq. added as Attorney for the Commonwealth for Defendant Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts		
04/09/2019	Party(s) file Agreement Regarding Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction Applies To: Bourquin, Esq., Ruth A (Attorney) on behalf of Correira, John, Massachusetts Coalition for the Homeless, Treeful, Joseph (Plaintiff); Bomberg, Esq., Patrick Otto (Attorney) on behalf of Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts (Defendant)	7	 Image
04/17/2019	MEMORANDUM & ORDER: on Plaintiffs' Emergency Motion for a Preliminary Injunction Judge: Yessayan, Hon. Raffi N	8	 Image
04/17/2019	Preliminary Injunction issued for Plaintiffs Massachusetts Coalition for the Homeless, John Correira, Joseph Treeful. It is ordered and adjudged that Defendants(s) City of Fall River, City of Fall River Police Department and their various attorneys and agents are: ENJOINED and RESTRAINED from any enforcement of G.L. c. 85 § 17A during the pendency of this litigation. Judge: Yessayan, Hon. Raffi N	9	 Image
04/19/2019	Defendant Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts's Assented to Motion to Extend the Time in Which to File a Responsive Pleading	10	 Image
04/22/2019	Endorsement on Motion to Extend the Time in Which to File a Responsive Pleading (#10.0): ALLOWED Motion is allowed by assent. This defendant shall have until May 14, 2019 by which to file a responsive pleading. Judge: Sullivan, Jennifer A Applies To: Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts (Defendant)		 Image
05/17/2019	Attorney appearance On this date Timothy James Casey, Esq. added as Attorney for the Commonwealth for Defendant Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts	11	 Image

Add. 25

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/17/2019	Defendant Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts's Assented to Motion to Enlarge Deadline for Defendant Quinn to Respond to Complaint	12	 Image
05/21/2019	Endorsement on Motion to enlarge deadline for defendant Quinn to respond to complaint (#12.0): ALLOWED by assent. Judge: Yessayan, Hon. Raffi N		 Image
05/31/2019	Defendant Thomas Quinn Individually and in his/her capacity As the District Attorney for Bristol County, Massachusetts's Notice of Consent to Entry of Judgment on Count I of Complaint	13	 Image
06/03/2019	Plaintiffs Massachusetts Coalition for the Homeless's Joint Motion to Stay Proceedings in the Superior Court Pending Rulings by the Supreme Judicial Court on the Parties' Joint Motion to Transfer Count I and on the Constitutionality of G.L. c. 85 Section 17A	14	 Image
06/03/2019	Plaintiffs Massachusetts Coalition for the Homeless's Notice of Partial Voluntary Dismissal Without Prejudice	15	 Image
06/03/2019	Plaintiffs Massachusetts Coalition for the Homeless's Response to the District Attorney's Notice of Consent to Entry of Judgment on Count I of Complaint	16	 Image
06/10/2019	Endorsement on Notice of consent to entry of judgment on Count I of complaint (#13.0): No Action Taken at this time, as all proceedings on this matter have been stayed pending ruling by the Supreme Judicial Court Judge: Yessayan, Hon. Raffi N		 Image
06/10/2019	Endorsement on Motion to stay proceedings in the Superior Court pending rulings by the Supreme Judicial Court on the parties' joint motion to transfer Count I and on the Constitutionality of G.L. c 85, §17A (#14.0): ALLOWED		 Image
07/29/2019	Notice of docket entry received from Supreme Judicial Court You are hereby notified that on July 26, 2019, the following was entered on the docket of the above referenced case: Notice to counsel/parties: The Court, Cypher, J., has scheduled this matter for a hearing on Wednesday, July 31, 2019 at 12:00 p.m. at the Supreme Judicial Court for the County of Suffolk, Courtroom Two, John Adams Courthouse, One Pemberton Square, Boston, MA	17	 Image
03/02/2020	Notice of docket entry received from Supreme Judicial Court In accordance with the Rules of Appellate Procedure, Nos. 9(e) and 10(a) and (b), the enclosed copy of the Reservation and Report and the Notice of Assembly of the Record on Appeal or on Reservation and Report to the Full Court in the above-entitled case are hereby mailed to you. In compliance with these rules, the appealing party must enter the case in the Supreme Judicial Court for the Commonwealth within ten (10) days of receipt of this notice. Entry of the case will be made in the Clerk's Office, Supreme Judicial Court for the Commonwealth, John Adams Courthouse, One Pemberton Square, Room 1400, Boston, Massachusetts 02108-1724, upon receipt of the filing fee of \$300.00. A copy of the record is available from this office for a fee of \$.20 per page. (Maura S. Doyle, Clerk)	18	 Image
03/02/2020	Notice of docket entry received from Supreme Judicial Court In accordance with the Rules of Appellate Procedure, Rule 9(e), notice this day has been sent to the Clerk of the Supreme Judicial Court for the Commonwealth, along with two (2) certified copies of the docket entries. The record has been fully assembled in the office of the Clerk of the Supreme Judicial Court for Suffolk County. The appealing party must enter the case in the Supreme Judicial Court for the Commonwealth: a) if the appeal is subject the Mass. R. A. P. 10(a) and (b), within ten (10) days of the receipt of this notice; OR b) if the appeal is subject to S.J.C. Rule 2:21 (copy attached) within fourteen (14) days of the filing of the notice of appeal. This notice does not constitute entry in the Supreme Judicial Court for the Commonwealth. (Maura S. Doyle, Clerk)	19	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Pending		

#7

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS

Superior Court Department

MASSACHUSETTS COALITION
FOR THE HOMELESS, JOHN
CORREIRA, and JOSEPH
TREEFUL

Plaintiffs,

v.

THE CITY OF FALL RIVER, et. al

Defendants

BRISTOL, SS SUPERIOR COURT
FILED

APR - 9 2019

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

Civil Action No. 1973CV00299

**AGREEMENT REGARDING PLAINTIFF'S MOTION FOR TEMPORARARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCITON**

The Bristol District Attorney's Office agrees that during the pendency of the litigation to determine the Constitutionality of G.L.c. 85, § 17A (Massachusetts Coalition for the Homeless, John Correia and Joseph Treeful, v. The City of Fall River, et al., Civil Action No. 1973-CV-00299) it will dismiss all pending complaints, and any new complaints brought under this statute. A list of all open and pending cases of which the District Attorney is at present aware has been provided to Plaintiff's counsel.

The District Attorney notes that a preliminary analysis shows that, prior to the commencement of this litigation, the Office disposed of at least eighty cases brought under § 17A, and is unaware of any instance in which it obtained, or even sought, a conviction under this statute. The Office further notes that whether new complaints are sought under § 17A is not a decision within the responsibility of this Office.

The Bristol District Attorney's Office does not waive any rights or defenses to the ongoing litigation.

Respectfully submitted,

FOR THE PARTIES

On behalf of the Plaintiffs

On behalf of the Bristol District Attorney



RUTH A. BOURQUIN
BBO #552985
American Civil Liberties Union
Foundation of Massachusetts
211 Congress Street
Boston, MA 02110
617 482-3170



PATRICK O. BOMBERG
First Assistant District Attorney
BBO 566805
888 Purchase Street
New Bedford, MA 02740
508 961-1800

Dated: April 9, 2019

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS SUPERIOR COURT

Bristol, SS.

FILED

Superior Court

JUN 03 2019

MASSACHUSETTS COALITION FOR THE)
HOMELESS, JOHN CORREIRA, and MARC J. SANTOS, ESQ.
JOSEPH TREEFUL,)
CLERK/MAGISTRATE

Plaintiffs,)

v.)

THE CITY OF FALL RIVER, et. al)

Defendants)

Civil Action No. 1973-CV-
00299

JOINT MOTION OF PLAINTIFFS AND FALL RIVER DEFENDANTS TO STAY
PROCEEDINGS IN THE SUPERIOR COURT PENDING RULINGS BY THE
SUPREME JUDICIAL COURT ON THE PARTIES' JOINT MOTION TO
TRANSFER COUNT 1 AND ON THE CONSTITUTIONALITY OF G.L. c. 85, § 17A

Introduction

Plaintiffs Massachusetts Coalition for the Homeless, John Correia, and
Joseph Treeful and Defendants City of Fall River and Albert Dupere, in his capacity
as Chief of Police in Fall River, jointly move for a stay of further proceedings in the
Superior Court.

These parties seek a stay of Superior Court proceedings pending a ruling by
the Supreme Judicial Court on: 1) their Joint Petition for a transfer of Count 1 of
the Verified Complaint to the Supreme Judicial Court, pursuant to G.L. c. 211, §
4A, last sentence, and 2) to the extent the joint Petition is granted, the

constitutionality of G.L. c. 85, § 17A.¹ The parties expect that the Petition for Transfer will be filed with the Supreme Judicial Court promptly after this Court's action on this Motion to Stay.

The proposed stay would toll the time for defendants to file responsive pleadings to the Verified Complaint, deadlines for discovery, and deadlines for motions for summary judgment and trial. The parties to this motion further request that the proposed stay delay this Honorable Court's issuance of any substantive order or ruling in response to Defendant Quinn's filing on Friday, May 31, 2019 of a Notice of Consent to Entry of Judgment on Count 1 of Complaint (the "Notice").

Grounds for this Motion

This action challenges the facial constitutionality of a state statute, G.L. c. 85, § 17A ("the Statute" or "Section 17A"), which has been applied by the defendants in this case but is applicable to and in fact is being applied by other municipalities in the Commonwealth, including the City of Brockton. "Mayor: Brockton will enforce panhandling unless judge says otherwise," Brockton Enterprise (April 21,

¹ After being notified of this other parties' intention to file this Joint Motion, the Bristol County District Attorney, named under Count 1 in his official capacity, through his counsel the Attorney General of the Commonwealth, filed the Notice. Further, Plaintiffs have filed, simultaneously with this motion, a notice of partial voluntary dismissal covering only Count 2, claims against Defendants Paul Bernier, David Gouveia, James Smith, Michael Pavao, and Derek Amaral in both their official and individual capacities, and claims against Chief of Police Albert Dupere in his individual capacity. These individuals in these capacities therefore are not parties to this joint motion.

2019) available at <https://www.enterpriseneews.com/news/20190421/mayor-brockton-will-enforce-panhandling-laws-unless-judge-says-otherwise> .

As this Honorable Court noted during the parties' argument on Plaintiffs' motion for preliminary injunction on Tuesday, April 9, 2019, a decision by an appellate court of the Commonwealth is likely needed to clarify statewide the issue of the constitutionality of the Statute.

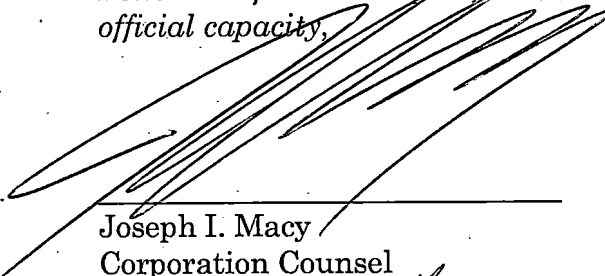
Because the question of the facial constitutionality of the Statute is a pure question of law, the undersigned parties respectfully suggest that a transfer of that question by the Supreme Judicial Court to itself would provide the most efficient means to resolve the question. Staying the proceedings in this Court pending resolution of the matter by the Supreme Judicial Court would conserve both judicial resources and resources by the litigants in this case.

Conclusion

The undersigned parties therefore jointly request that this Honorable Court grant the requested stay.

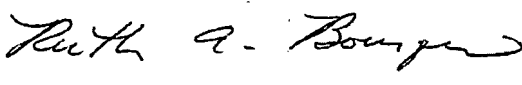
Respectfully submitted,

*On behalf of the City of Fall River and
Police Chief Albert Dupere, in his
official capacity,*



Joseph I. Macy
Corporation Counsel
BBO # 312520
Gary Howayeck
Assistant Corporation Counsel
BBO # 630053
City of Fall River
One Government Center, Room 627
Fall River, MA 02722

*On behalf of the Plaintiffs Massachusetts
Coalition for the Homeless,
John Correia, and Joseph Treeful,*



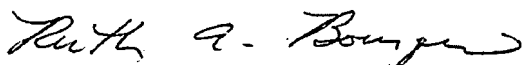
Ruth A. Bourquin, BBO # 552985
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/s/ Stesha Emmanuel
David Himelfarb, BBO # 649596
Stesha Emmanuel, BBO # 682293
Rachel E.D. Churchill, BBO # 675673
Quincy Kayton, BBO # 696797
McCarter & English, LLP
265 Franklin Street
Boston, MA 02110
semmanuel@mccarter.com
617-449-6511

Certificate of Service

I, Ruth A. Bourquin, hereby certify that on this 3rd day of June, 2019, I caused a copy of this Joint Motion to be served by email and U.S. mail, first class postage prepaid on:

Timothy Casey
Assistant Attorney General
One Ashburton Place
Boston, MA 02108



Ruth A. Bourquin

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS SUPERIOR COURT

Bristol, SS. Superior Court

JUN 03 2019

MASSACHUSETTS COALITION FOR THE HOMELESS, JOHN CORREIRA, and JOSEPH TREEFUL, MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

Plaintiffs,

v.

THE CITY OF FALL RIVER, et. al

Defendants

Civil Action No. 1973-CV-00299

PLAINTIFFS' NOTICE OF PARTIAL VOLUNTARY DISMISSAL WITHOUT
PREJUDICE

Plaintiffs the Massachusetts Coalition for the Homeless, John Correia and Joseph Treeful by their counsel, hereby file this Notice of Partial Voluntary Dismissal Without Prejudice ("Notice"), pursuant to Mass. R. Civ. P. 41(a)(1)(i), of:

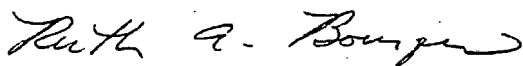
- (1) Count 2 of the Verified Complaint against all parties;
- (2) All claims against Defendant Albert Dupere in his **individual** capacity;
- and
- (3) All claims against Defendants Bernier, Gouveia, Smith, Pavao and Amaral.

This Notice is filed as a matter of right, in that none of the affected Defendants have filed a responsive pleading to the Verified Complaint.

This Notice does not affect Count 1 of the Verified Complaint, which remains pending, as stated against the City of Fall River, Albert Dupere, in his capacity as

Chief of the Fall River Police Department, and Defendant Thomas Quinn in his capacity as District Attorney of Bristol County.

*On behalf of the Plaintiffs Massachusetts Coalition for the Homeless,
John Correia, and Joseph Treeful,*



Ruth A. Bourquin, BBO # 552985
rbourquin@aclum.org
Jessica Lewis, BBO # 704229
jlewis@aclum.org
American Civil Liberties Union
Foundation of Massachusetts
211 Congress Street
Boston, MA 02110
617-482-3170 ext. 348

/s/ Stesha Emmanuel

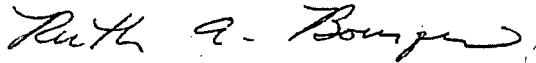
David Himelfarb, BBO # 649596
Stesha Emmanuel, BBO # 682293
Rachel E.D. Churchill, BBO # 675673
Quincy Kayton, BBO # 696797
McCarter & English, LLP
265 Franklin Street
Boston, MA 02110
semmanuel@mccarter.com
617-449-6511

Certificate of Service

I, Ruth A. Bourquin, hereby certify that on this 3rd day of June, 2019, I caused a copy of this Notice to be served by email and U.S. mail, first class postage prepaid on:

Timothy Casey
Assistant Attorney General
One Ashburton Place
Boston, MA 02108

Joseph I. Macy
Corporation Counsel
City of Fall River
One Government Center, Room 627
Fall River, MA 02722



Ruth A. Bourquin

16

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS. SUPERIOR COURT

Bristol, SS.

Superior Court

JUN 03 2019

MASSACHUSETTS COALITION FOR THE HOMELESS, JOHN CORREIRA, and JOSEPH TREEFUL,

Plaintiffs,

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

Plaintiffs,

v.

Civil Action No. 1973-CV-00299

THE CITY OF FALL RIVER, et. al

Defendants

PLAINTIFFS' INITIAL RESPONSE TO THE DISTRICT ATTORNEY'S NOTICE OF CONSENT TO ENTRY OF JUDGMENT ON COUNT 1 OF COMPLAINT

Plaintiffs the Massachusetts Coalition for the Homeless, John Correia and Joseph Treeful respectfully file this Initial Response to the District Attorney's Notice of Consent to Entry of Judgment on Count 1 of Complaint, dated May 31, 2019 ("Notice"). For the reasons that follow, Plaintiffs ask that the Court take no action in response to the Notice at the present time or without hearing.

1. Plaintiffs appreciate the District Attorney's concession, by and through its counsel the Attorney General of the Commonwealth, that the challenged Statute, G.L. c. 85, § 17A is unconstitutional on its face.

2. Nevertheless, the District Attorney's submission implies that only a certain "portion" of § 17A should be declared unconstitutional. It is unclear what the District Attorney could mean. It is not only a "portion" or certain words of the

challenged Statute that need to be—and that Plaintiffs seek to have—declared unconstitutional. Rather, the entire Statute is and should be declared facially unconstitutional. *See* Verified Complaint, Prayer for Relief number 4. It is not possible for a portion of § 17A to survive because its content-based restrictions, now conceded by the District Attorney, pervade the statute. For example, it discriminates between those selling newspapers and those selling other items, and it criminalizes engaging in the expressive conduct of signaling or causing the stopping of a moving vehicle, regardless of whether any traffic disruption occurs.

3. To the extent the District Attorney is inviting the Court to rewrite the Statute, serious questions of separation of powers are raised. *See, e.g., United States v. Stevens*, 559 U.S. 460, 481 (2010) (and cases cited) (holding that rewriting of statute that violates the First Amendment invades the legislative domain and diminishes the incentive for the legislative body to write narrowly tailored statutes). Indeed, the District Attorney's submission acknowledges that judgment should enter "in favor of the plaintiffs on Count I," and that questions of reasonable time, place, and manner regulations are "not presented by this case." This case simply does not present an opportunity to tinker with or salvage portions of § 17A.

4. The Notice was purportedly filed pursuant to Mass. R. Civ. P. 65, which allows a ruling on the merits to be joined with a ruling on a pending request for a preliminary injunction. However, there is no pending request for a preliminary injunction. And there is no pending motion before the court seeking entry of final judgment against any party.

5. In addition to the above, per papers filed today, Plaintiffs and the City of Fall River and the Fall River Police Chief are jointly seeking a stay of Superior Court proceedings pending the filing of a Joint Petition to the Supreme Judicial Court, which will ask that Court to transfer this case to itself for a decision on Count 1. *See* G.L. c. 211, § 4A, last sentence. Plaintiffs anticipate that Joint Petition will be filed soon after this Court rules on the Joint Motion to Stay. To preserve maximum flexibility for the Supreme Judicial Court to resolve questions about the constitutionality of § 17A, Plaintiffs respectfully request that the Court not take any substantive action in response to the Notice until after the conclusion of any Supreme Judicial Court proceedings arising from the anticipated Joint Petition and the opportunity for a hearing on the scope of required relief.

For all these reasons, Plaintiffs respectfully ask this Court to refrain from taking any substantive action on the merits in response to the filing of the Notice.

Respectfully submitted,

*On behalf of the Plaintiffs Massachusetts
Coalition for the Homeless,
John Correia, and Joseph Treeful,*

Ruth A. Bourquin

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rbourquin@aclum.org
Jessica Lewis, BBO # 704229
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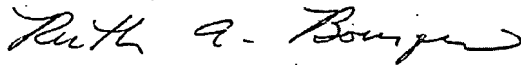
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Ruth A. Bourquin